

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

THOMAS FITZPATRICK, ET AL.,

Plaintiffs,

-v-

BOSTON MARKET CORPORATION,

Defendant.

21 Civ. 9618 (PAE)

ORDER

PAUL A. ENGELMAYER, District Judge:

The Court today held an on-the-record conference, principally addressing the anticipated motion by defendant Boston Market Corp. (“Boston Market”) for summary judgment. This motion would be based on the ground that, since 2004, the New York City Department of Labor (“DOL”) has purportedly exempted Boston Market from compliance with the requirement of New York Labor Law § 191.1a(ii) to pay workers on a weekly basis.

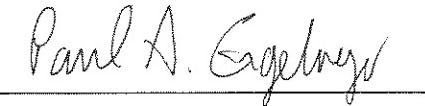
For the reasons discussed in the conference:

1. The Court denies without prejudice plaintiffs’ pending motion for class certification, which all parties agree need not be resolved until the defense’s summary judgment motion has been resolved. The denial is without prejudice to plaintiffs’ right to move anew for class certification following summary judgment. The Clerk of Court is respectfully requested to terminate the motion pending at Dkt. 27.
2. The Court gives Boston Market until December 16, 2022, to complete document discovery from DOL with respect to the exemption. The Court expects Boston Market to proceed with urgency to obtain admissible evidence from the DOL of the exemption it claims to have received in 2004, whether in the form of a certification of

public records under Fed. R. Evid. 803(8), an attestation from a qualified records custodian at DOL authenticating a record to this effect, an affidavit by a percipient official at DOL to the same effect, or otherwise.

3. The Court gives plaintiffs until January 13, 2023, to complete its discovery into the exemption, including, if sought, a deposition of pertinent DOL official(s).
4. The Court expects DOL—whose records as to the exemption are central to the disposition of this putative class action—to comply with dispatch with any proper subpoena or request for testimony on the discrete point at issue: whether and when it granted Boston Market the exemption in question. Should either party's request for discovery from DOL on this point be met with non-compliance, counsel immediately are to notify the Court, which will schedule an emergency conference, which counsel for DOL will be ordered to attend.
5. A joint letter from the parties is due January 27, 2023, with respect to the future course of this case, including whether plaintiffs, if by then furnished admissible evidence establishing that the exemption was granted as Boston Market has represented, intend to move to dismiss this case.

SO ORDERED.



Paul A. Engelmayer
United States District Judge

Dated: November 1, 2022
New York, New York